

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Annual CPNI Certification)	File No. EB-08-TC-5674
)	
Omnibus Notice of Apparent Liability for Forfeiture)	NAL/Acct. No. 200932170819
)	
Texas State Technical College)	FRN: 0007936313

To: the Chief, Enforcement Bureau:

**TEXAS STATE TECHNICAL COLLEGE RESPONSE TO
OMNIBUS NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Texas State Technical College ("TSTC"), by counsel, hereby responds to the Commission's February 24, 2009, Omnibus Notice of Apparent Liability For Forfeiture ("NAL")(DA 09-240), which inter alia assessed forfeiture liability on TSTC in the amount of \$20,000, for what the Commission characterized as a willful or repeated violation of section 222 of the Communications Act of 1934. In arriving at this conclusion, the Commission cites to TSTC's failure to submit its 2007 annual customer proprietary network information ("CPNI") compliance certificate, as required by 47 CFR § 64.2009(e). TSTC requests that for the reasons enumerated below, and supported by the attached declarations, that the Commission lift its forfeiture assessment on TSTC with respect to this matter.¹

BACKGROUND

On September 5, 2008, TSTC received a letter from the Commission's Enforcement Bureau (EB-08-TC-5674). The Commission Letter requested certain information concerning whether TSTC had complied with the requirements of 47 CFR § 64.2009(e) by filing a compliance certificate for

¹ Pursuant to the terms of the NAL and 47 C.F.R. § 1.80(f)(3) this response is timely filed. Declarations of Shelli Scherwitz, TSTC's Director of Telecommunications Services, and Michael L Reeser, TSTC President, are attached hereto as Exhibits 1 & 2.

calendar year 2007. Such compliance certificate, the FCC stated, was to have been filed in EB Docket 06-36 on or before March 1, 2008. TSTC is a not for profit government educational agency of the State of Texas, that in support of its educational mission provides flat fee IP based data and video services to itself and five other customers, all of which are other Texas state educational institutions or Texas government entities. TSTC responded to the Commission Letter on September 18, 2008 by informing the Commission that it had not been aware that its limited service activities subjected TSTC to such a reporting requirement (attached hereto as Exhibit 3 with copy of Commission letter). Nonetheless, TSTC stated that out of an abundance of caution and a respect for the privacy of its customers, it did have in place during the applicable period, operating procedures adequate to ensure compliance with the Rules of Subpart U. Such procedures had been reduced to a written and distributed policy regarding the handling of CPNI. Concurrent with its response to the Commission's letter inquiry, TSTC submitted a CPNI compliance certificate for 2007 in EB Docket 06-36 as suggested by staff (attached hereto as Exhibit 4). That certificate stated, in pertinent part, that for the applicable 2007 time period TSTC had in place sufficient CPNI policies to ensure compliance with the FCC's CPNI requirements. TSTC further clarified that during 2007 and, notwithstanding any apparent paperwork oversight, TSTC did not sell or engage in any unauthorized disclosures of CPNI, did not receive any complaints from customers concerning data brokers or TSTC CPNI procedures, and had no reason to take any actions against data brokers. Thereafter, on or about February 24, 2009, TSTC received the instant notice of apparent liability assessing a forfeiture of \$20,000 regarding the potentially unnecessary but late-filed report.

I. THE COMMISSION'S CPNI REQUIREMENTS DO NOT APPLY TO TSTC

The Commission's CPNI rules are designed to implement Section 222 of the Communications Act, which requires telecommunications carriers to take specific steps to ensure that CPNI is adequately protected from unauthorized disclosure.² The annual CPNI certification requirement was

² See *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket Nos. 96-11 and 96-149; Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061 (1998) (*CPNI Order*); and 47 CFR § 64.2001 et seq.

adopted by the Commission in its *EPIC CPNI Order*, released April 2, 2007,³ and was codified within Section 64.2009(e) of the Commission's rules.⁴ The Annual Certification requirement was placed on each "Telecommunications Carrier," a term not defined within the *EPIC CPNI Order*. The Commission's definition of a Telecommunications Carrier however, is set forth under Section 64.2003(o) of its Rules by reference to Section 153(44) of the Statute, which defines it as "any provider of telecommunications services...."⁵ A "Telecommunications Service," in turn is defined in Section 153(46) of the Statute as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."⁶ Additionally, it appears that at least one party has sought reconsideration of the Commission's *EPIC CPNI Order*, in part based on a request that Telecommunications Carriers that are not interconnected with the Public Switched Network, and which do not generate individual call CPNI records, be deemed outside the scope of the requirements adopted within the *EPIC CPNI Order*.⁷ From a review of the docket, the Commission has yet to rule on this reconsideration request.

In the case of TSTC, the CPNI certification requirements contained within Section 64.2009(e) do not apply. Specifically, it is clear that this State College is not providing Telecommunications Services as defined within Section 64.2003(p) of the Commission's Rules. Further, it is also apparent that TSTC does not fit within the definition of a Telecommunications Carrier under Section 64.2003(o).

³ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115; WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6953 (2007) ("*EPIC CPNI Order*"), *aff'd sub nom. Nat'l Cable & Telecom Assoc. v. FCC*, No. 07-132 (D.C.Cir. decided Feb. 13, 2009).

⁴ 47 C.F.R. § 64.2009(e).

⁵ 47 U.S.C. § 153(44); See also 47 C.F.R. § 64.2003(o).

⁶ 47 U.S.C. § 153(46); See also 47 C.F.R. § 64.2003(p).

⁷ See Petition for Partial Reconsideration of the Enterprise Wireless Alliance and the USMSS, Inc., filed July 9, 2007 in CC Docket 96-115. See also FCC Public Notice, Petition for Reconsideration of Action in Rulemaking Proceeding, Report No. 2821, released July 20, 2007.

a. TSTC Does Not Provide Telecommunications Services to The Public

As discussed above, a Telecommunications Service is defined under the Commission's Rules as the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public. A review of TSTC's service offerings and limited client base reveals that TSTC does not offer telecommunications services for a fee directly to the public.

TSTC is a Governmental Educational Entity of the State of Texas. TSTC provides service to itself and to other Texas State governmental entities for their own internal uses. Essentially, TSTC's operation is the State of Texas through one of its governmental agencies providing services to its various other Texas governmental entities. TSTC has five clients that it bills on a flat fee, all you can consume basis. These clients include three State or Community Colleges, one Municipal Hospital and the Region 14 Educational Service Center a component of the West Texas Telecommunications Consortium, whose membership is limited to: state K-12 and higher education institutions, hospitals, government agencies, libraries, City governments and other public institutions of the state of Texas. While TSTC does charge a flat fee for its services, such fees are used only to defray the cost of this not for profit public entity. Therefore TSTC is not in the business of selling communications services for a profit. Further, while TSTC is providing telecommunications for a fee, neither TSTC nor its customers in turn resells or provides such services to members of the general public.

b. TSTC Does Not Provide Telecommunications Services Covered By The CPNI Requirement

TSTC does not provide any personal telecommunications services or anything approximating the kind of telephony like services, with which the Commission appears to be concerned. Rather, TSTC's government customers and educational partners are provided only the following "IP Based" services: 1) Internet bandwidth; 2) Point to Point Video Bridging services (not interconnected with any public switched network); 3) web based software management; and 4) technical support. None of these IP based services are presently covered by the CPNI protection and annual certification requirement.

Despite an overbroad definition of telecommunications that would appear to include everything from a pair of tin cans connected by a string to the most sophisticated satellite network, even the Commission seems unable to provide specific guidance regarding what types of service providers should be deemed subject to the CPNI requirements and the annual certification filing. In a Public Notice released February 13, 2009, the Commission attempted to provide guidance regarding this vague and ill defined obligation. To clarify the basic conundrum regarding who must file, the Commission oddly starts by stating that it would not be providing an exhaustive list of what types of service providers should be filing the annual certification.⁸ Instead the Commission provided the following list of types of service providers affected: LECs (including ILECs, rural LECs and CLECs), IXCs, paging providers, CMRS providers, resellers, prepaid telecommunications providers, and calling card providers.⁹ The Commission also specifically clarified that such requirements had been extended to interconnected VoIP services by the *Epic CPNI Order* because such services were increasingly used by the public to replace analog voice service, and that a consumer would have reasonable expectation of privacy concerning their CPNI irrespective of whether a call is made using the services of a wireline carrier, a wireless carrier, or an interconnected VoIP provider.¹⁰

From the list provided by the Commission, it would seem that the Commission's CPNI requirements are targeted to telephone like and paging type services offered to the general public.¹¹ While the Commission has noted that it is exploring whether CPNI requirements should apply to other IP based voice or data services as part of its IP Enabled Services Docket, to date it has used its Title I

⁸ See *Public Notice: Enforcement Bureau Reminds Carriers of March 1 Deadline and Provides Further Guidance on Filing of Annual Customer Proprietary Network Information (CPNI) Certifications Under 47 C.F.R. §64.2009(e)*, EB Docket 06-36, DA 09-240, released February 13, 2009.

⁹ *Id.*

¹⁰ *Epic CPNI Order* at ¶ 56. Interconnected VoIP providers provide a service that: "(1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and terminate calls to the public switched network." *Id.* at n. 170 citing 47 C.F.R. § 9.3

¹¹ This is consistent with the Commission's statement in crafting a business exemption to its CPNI obligations, that "privacy concerns of telecommunications consumers are greatest when using personal telecommunications services." *Epic CPNI Order* at ¶ 25. This is also consistent with the Commission's extension of CPNI collection and reporting requirements only to providers of "interconnected" VoIP services.

ancillary jurisdiction only to apply the CPNI requirements to VoIP services, and not all VoIP services, but only those that are interconnected with the public switched telephone network.¹² Therefore, The IP Based internet and non-interconnected video bridging services provided by TSTC to its institutional government clients are not yet covered by any CPNI protection or certification requirements. Accordingly the Commission's conclusion that TSTC was subject to the annual CPNI certification requirement of Section 64.2009(e) of its rules constituted error.

c. TSTC is Not A Telecommunications Carrier Under the Commission's Rules

The CPNI annual certification requirement was made applicable only to Telecommunications Carriers. As discussed above, the definition of a "Telecommunications Carrier" under Section 64.2003(o) of the Commission's Rules and Section 153 (44) of the Act as "any provider of telecommunications services," is by definition wholly dependent on the services being provided. If, as discussed in the previous sections, TSTC is not providing telecommunications to the public and is therefore not providing a "Telecommunications Service" within the Commission's definition within Section 64.2003(p) of its Rules or Section 153(46) of the Statute, then it also does not fit within the Commission's definition of a "Telecommunications Carrier" to which annual CPNI certification requirements would attach. Accordingly, the Commission's conclusion that TSTC is a Telecommunications Carrier subject to annual CPNI certification requirements was erroneous. As a

¹² *Epic CPNI Order* at ¶ 10, citing *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4910, at ¶ 71 (March 10, 2004) (*IP-Enabled Services NPRM*). The Commission noted that some IP-enabled services, to the extent that they are viewed as "replacements for traditional voice telephony[,] raise "social policy concerns" relating to emergency services, law enforcement, disabilities access, consumer protection, and universal service. It further considered whether a service's functional equivalence to, or substitutability for, traditional telephony provides a basis for determining the appropriate regulatory treatment of that service. 19 FCC Rcd at 4886-87, para. 36 & 37. Accordingly, The Commission has been gradually extending certain social policy requirements to interconnected VOIP services under its ancillary authority contained in Title I of the Communications Act, such as disability access requirements, 911 emergency calling capabilities, universal service contribution obligations, and made them subject to the requirements of the Communications Assistance for Law Enforcement Act. See *VoIP 911 Order*, 20 FCC Rcd at 10246, para. 1; *Universal Service Contribution Methodology*, WC Docket No. 06-122, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7538-43, paras. 38-49 (rel. June 27, 2006); *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989, 14991-92, para. 8 (2005).

consequence, the Commission's finding in its NAL that TSTC had engaged in a willful or repeated violation of section 222 of the Communications Act of 1934 was also incorrect.

II EVEN IF TSTC WAS SUBJECT TO CPNI CERTIFICATION REQUIREMENTS ITS LATE FILING IN 2007 WOULD NOT WARRANT A FINE

Even if arguendo, TSTC as a provider of non-interconnected IP based data and video services were subject to the annual CPNI certification requirement, in light of the specific facts and circumstances in this case, its late filing would not warrant a fine.

First, as discussed above, the Commission to date has been unable to provide clear guidance as to who is subject to the annual requirement. In fact, the continued pendency of a Petition for Reconsideration of the *EPIC CPNI Order*, based on a request for clarification of the applicability of the requirement to non-interconnected data and paging service providers, suggests that there has been ongoing - and as of yet unresolved - confusion as to the nature of service providers to which this requirement attaches. The Commission's levying of fines of this magnitude in advance of such clarification, where confusion still clearly exists and where even the Commission itself has been unable to provide licensees with an exhaustive list of what service providers are subject to the requirement, is therefore unduly punitive as well as arbitrary and capricious.¹³

Second, based on the Commission's Orders to date, and given the fact that TSTC has been providing non-interconnected IP based data and video services only to Texas State government institutions, and not interconnected VoIP or other covered telephone or paging related telecommunications services directly to the public, TSTC had a reasonable basis to conclude that it was not subject to the new annual CPNI Certification requirement.¹⁴ Accordingly, the Commission's forfeiture assessment against TSTC should be cancelled.

¹³ Even 47 CFR § 1.80(b) lists the base amount for failure to file required forms or information as \$3000.00. The \$20,000.00 amount settled on by the Commission, more than 650% of the base amount would seem to be excessive, especially in light of the continued uncertainty evident from the number of entities cited, the Commission's inability to clarify, and the pendency of a reconsideration request.

¹⁴ The *EPIC CPNI Order* clearly stated that the FCC was considering extending CPNI to VoIP and other IP based information services as part of its ongoing *IP-Enabled Services* Docket, and yet used its Title I authority only to extend CPNI requirements to interconnected VoIP services. Presumably the applicability of CPNI to other IP based VoIP and data

Third, in 2007, TSCT was already subject to Texas State regulations governing its handling of sensitive or proprietary information.¹⁵ Accordingly, TSTC throughout the applicable period of 2007 and out of an abundance of caution, even reasonably believing that it was not subject to CPNI record requirements, maintained internal CPNI procedures to ensure that the limited data it maintained related to its five institutional Texas government IP Data and video clients remained secure. Those procedures were sufficient to satisfy the Commission's Requirements under Subpart U of Section 64 of its Rules. Such precautionary measures clearly demonstrate that TSTC was complying with the underlying goals of the Commission's CPNI rules regardless of their applicability to TSTC. Accordingly, given TSTC's substantial compliance with the policy even where it reasonably believed it was not subject to the requirements, the Commission should not assess a forfeiture against TSTC, even if it ultimately determines that TSTC was required to submit the Certification and was therefore late in doing so.

Fourth, TSTC's prompt filing of an annual CPNI Certification for 2007, following receipt of a letter from the Commission's Enforcement Bureau on September 5, 2008, alerting it to the questionable annual filing requirement, and despite its belief that it was not subject to the requirement, demonstrates TSTC's desire to comply with FCC rules and regulations. Accordingly, the Commission's assessment of a forfeiture against TSTC, a government nonprofit entity, was inappropriate.

Fifth, TSTC was able to report in its September 18, 2008 response to the Commission's letter and in a simultaneously filed annual certification, despite any possible paperwork violation, that during the applicable period in 2007: 1) TSTC had adequate policies and procedures in place to ensure compliance with the Commission's CPNI rules; 2) that it had not sold nor engaged in any unauthorized disclosures of CPNI; 3) that it had not received any complaints from any of its five customers

services will be determined in due course as part of the *IP-Enabled Services* Docket. See *EPIC CPNI Order at ¶¶ 10, 54-59*.

¹⁵ See 10 Tex. Admin. Code §§ 202 & 206. These regulations require all public entities of the State of Texas to have a information resources security program consistent with the State's Security Standards Policy. Such policies require risk analysis, access restrictions and per use authentication, staff education and oversight. Additionally, such policies protect customers or individuals using such state networks with regard to personal information and data gathering activities.

regarding its handling of CPNI or the activities of data brokers; and 4) that it had no occasion to take any actions against data brokers. Accordingly, because no actual harm occurred to any customer and because such customers' CPNI was fully protected during the applicable period, the assessment of a \$20,000 forfeiture against TSTC, a government nonprofit educational entity, for the mere late filing of a certification, is inappropriate and excessive, and the forfeiture should be cancelled.

Sixth, TSTC as a Texas State Nonprofit Educational institution, like other state educational institutions across the country, is experiencing increasing budget shortfalls and cutbacks during this recession. The Forfeiture assessed by the Commission would only place a further hardship on TSTC by diverting needed funds from other educational programs. Accordingly, even if for no other reason, the Commission should cancel the fine assessed against TSTC in this instance.

Thus, even if such rules were applicable to TSTC, the fact that the rules remain vague and subject to reconsideration, even after the Commission's 2009 clarification, provided TSTC with a good faith belief, given its provision of non-interconnected completely IP based services to limited institutional government customers, that it was not subject to any annual filing requirement. Further, given TSTC's, maintenance of a precautionary compliant CPNI program, its adherence to internal as well as state billing and information protection requirements, its prompt filing of a certification for 2007 following the FCC's letter, and the fact that during that applicable time period TSTC had received no complaints, TSTC, at worst, would be guilty of a mere paperwork violation, not meriting a forfeiture, much less a gargantuan \$20,000 fine. Further, because TSTC is an educational entity of the State of Texas, providing an essential not-for-profit service to itself and other State Agencies within Texas' Educational Service Center Region 14, the assessment of a fine would merely be taking needed educational funds from the State of Texas educational system during a time of relative financial hardship in order to fill federal coffers. Such a penalty, contrary to the Commission's longstanding policies of providing funding and otherwise promoting the provision of broadband services to schools and libraries, would be siphoning funds from such services and providing disincentives to state entities that attempt to provide themselves with cost effective and essential broadband services.


CONCLUSION

Therefore, TSTC respectfully requests that because it is not subject to the annual CPNI certification requirement that the FCC cancel its assessed \$20,000 forfeiture. Alternatively, even if it is determined that TSTC would indeed have been subject to the annual certification requirement, TSTC respectfully requests in light of the specific facts and circumstances of this case that the Commission cancel the assessed \$20,000 forfeiture, in furtherance of the public interest, convenience and necessity.

Respectfully submitted,

TEXAS STATE TECHNICAL COLLEGE

By:



Evan D. Carb

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Its Attorney

March 25, 2009

Texas State Technical College
Response to
Omnibus Notice of Apparent Liability for Forfeiture (DA 09-240)

EXHIBIT 1

Declaration of Shelli Scherwitz, Director of Telecommunications Services

DECLARATION OF SHELLI SCHERWITZ

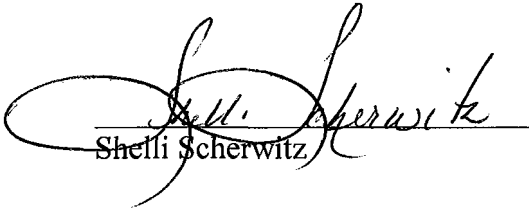
I, SHELLI SCHERWITZ, this 25th day of March 2009, hereby declare as follows:

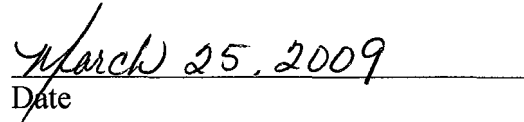
1. I am the Director of Telecommunications Services of Texas State Technical College West Texas ("TSTC"), an educational agency of the State of Texas.
2. In that capacity, I oversee the provision of internet and video distribution services by TSTC to other state educational entities and institutions within Texas Educational Service Center Region 14, and therefore have first hand personal knowledge of the procedures in place and activities related to TSTC's safeguarding of customer proprietary network information ("CPNI"). TSTC as a public State College is itself very sensitive to the handling and safeguarding of such information.
3. In 2006 TSTC applied for and received certification as a carrier for the provision of certain communications services.
4. TSTC's supplied services are all IP based and include the provision of: 1) Internet bandwidth; 2) Point to Point Video Bridging services (not interconnected with any public switched network); and 3) web based software management. TSTC also provides live technical support services to its customers.
5. While TSTC's bills five customers on a flat fee, all you can eat basis, all such customers must be members of the Texas Region 14 Service Center a component of the West Texas Telecommunications Consortium. These clients include three State or Community Colleges, one Municipal Hospital and the Region 14 Service Center itself. The service Center's members are limited to: state K-12 and higher education institutions, hospitals, government agencies, libraries, City governments and other public institutions of the state of Texas.
6. As a State Entity and a not for profit institution providing non-interconnected IP based data and video services to other state entities in its area, TSTC did not believe it was subject to the Federal CPNI requirements and was unaware of any reporting requirement regarding its internal procedures designed to ensure the confidentiality of its customers' proprietary network information. Accordingly, TSTC did not file a certificate for calendar year 2007 on or before March 1, 2008, in accordance with 47 CFR §64.2009(e), stating that it had in place operating procedures sufficient to ensure TSTC's compliance with Subpart U of Section 64 of the Commission's Rules.
7. Nonetheless, because TSTC is subject to State Policies as well as its own internal policies regarding billing, and proprietary school data and confidential information, and out of an abundance of caution TSTC maintained CPNI procedures during 2007 sufficient to satisfy the Federal CPNI policies contained in Section 64 of the Commission's Rules.

8. Upon receipt of the Enforcement Bureau's inquiry letter dated September 5, 2008 ("Commission Letter"), TSTC confirmed that no such Annual Certification had been submitted concerning 2007, and then performed a review of its internal practices regarding its handling and safeguarding of relevant customer proprietary network information related to TSTC's carrier services to ensure that it would have been able to make that certification on or before March 1, 2008.
9. That review and subsequent investigation has yielded the following conclusions. TSTC uses CPNI primarily in the process of billing its customers, an activity within the control of a relatively small group of people at TSTC. TSTC's unlimited use flat fee arrangement means that other than limiting bandwidth, TSTC does not track or collect information on its customers' usage patterns. TSTC does provide a K-12 content filter which restricts access to certain sites as required by federal and state law. Bandwidth usage levels may be discussed with customers in association with their preparation of E-rate filings. Additionally, a small group of technical staff who maintain the infrastructure and manage traffic also have access to information regarding present bandwidth limits on specific accounts.
10. Internal review confirmed that TSTC does not market such information to third parties, none of that information was shared with outside sources during the past year and no customer filed any complaint with regard to TSTC's handling of its proprietary network information. Having detected no problem and having received no complaints regarding data brokers, TSTC took no actions against such entities in 2007.
11. Internal policies distributed to and applicable to all TSTC staff with access to CPNI prohibit the disclosure of CPNI to third parties, except in accordance with the instructions provided by a customer, the safeguarding of such information with regard to filing and storage, and the securing of verification of identity when discussing CPNI with customers. That policy has been reduced to writing.
12. Upon receipt of the Commission Letter, TSTC also promptly sought the assistance of counsel and immediately moved to respond to the Commission's letter, and to remediate any possible past failure by TSTC to comply with the certification requirement, if applicable, by late-filing a certification statement for 2007. TSTC's response and its late-filed 2007 certification were submitted to the FCC on September 18, 2008.
13. TSTC as an agency of the State of Texas is highly sensitive to the need to protect proprietary network information, but as a small not for profit carrier, principally seeking to provide cost effective video and data services to area schools and municipal entities, it respectfully submits that the Forfeiture assessed by the Commission for at most a paperwork violation, would only serve to divert needed funds from other educational programs at a time when TSTC, like other Texas State educational institution, is experiencing increasing budget shortfalls and cutbacks due to the recession.

14. I have reviewed the attached Texas State Technical College Response to Omnibus Notice of Apparent Liability for Forfeiture, prepared by counsel at my direction.

I hereby certify, under the penalty of perjury, that the foregoing statements as well as those contained in the Texas State Technical College Response to Omnibus Notice of Apparent Liability for Forfeiture, are true, correct and accurate to the best of my knowledge, information and belief.


Shelli Scherwitz


Date

Texas State Technical College
Response to
Omnibus Notice of Apparent Liability for Forfeiture (DA 09-240)

EXHIBIT 2

Declaration of Michael L Reeser, President & Officer of TSTC

DECLARATION OF MICHAEL L. REESER

I, Michael L. Reeser, this 25th day of March 2009, hereby declare as follows:

1. I am the President and an Officer of Texas State Technical College ("TSTC"), an educational agency of the State of Texas.
2. In that capacity, I oversee the Department of Telecommunications Services at TSTC, which, provides IP based internet and video distribution services to other state educational entities and institutions within Texas Educational Service Center Region 14.
3. In my capacity as President, I have general knowledge of the policies and procedures in place within that department, but largely rely on the personal knowledge of the Director of Telecommunications Services, as the department manager.
4. I have reviewed the Response of Texas State Technical College to the FCC's February 24, 2009 Notice of Apparent Liability, as well as the statements made in the accompanying declaration of Shelli Scherwitz, Director of Telecommunications Services at TSTC, regarding TSTC's IP Based services and its activities in 2007 and 2008 regarding the protection of customer proprietary network information ("CPNI") and its compliance with FCC Rules regarding the handling of such CPNI.

I hereby certify, under the penalty of perjury, foregoing statements as well as those contained the attached declaration of Shelli Scherwitz and the Texas State Technical College Response to Omnibus Notice of Apparent Liability for Forfeiture, are true, correct and accurate to the best of my knowledge, information and belief.



Michael L. Reeser



Date

Texas State Technical College
Response to
Omnibus Notice of Apparent Liability for Forfeiture (DA 09-240)

EXHIBIT 3

TSTC September 18, 2008 Response to Commission CPNI Inquiry Letter
(Commission September 5, 2008 Inquiry Letter Attached)

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September 18, 2008

VIA EMAIL

Federal Communications Commission
Enforcement Bureau
Telecommunications Consumer Division
445 12th Street, S.W., Suite TW-A325
Washington, D.C. 20554
Attn: Robert Somers, Senior Attorney

Re: Texas State Technical College
Enforcement Bureau CPNI Inquiry
File No. EB-08-TC-5674

Dear Mr. Somers:

On behalf of Texas State Technical College West Texas ("TSTC"), this letter, and the attached declaration, respond to an FCC inquiry letter dated September 5, 2008, reference File No. EB-08-TC-5674 ("Commission Letter")(copy attached). The Commission Letter requested certain information concerning whether TSTC had complied with the requirements of 47 CFR § 64.2009(e) by filing a compliance certificate for calendar year 2007 on or before March 1, 2008 in EB Docket 06-36.

TSTC, a not for profit Texas State educational agency provides data and video carrier services for its customers, which are other state educational institutions and some municipal entities. While TSTC failed to timely provide the required certification, because it was unaware that it was subject to a reporting requirement, it did have in place during the applicable period operating procedures adequate to ensure compliance with the Rules of Subpart U. Such procedures have been reduced to a written policy which is attached hereto, and which has been distributed to all personnel with access to CPNI.

As the attached declarations of TSTC President Michael Reeser, and TSTC Director of Telecommunications Services, Shelli Scherwitz, as well as the late-filed remedial 2007 Certification make clear, during 2007, TSTC had adequate policies and procedures in place to ensure compliance with the Commission's rules regarding the safeguarding of CPNI. During such period, TSTC did not sell or engage in any unauthorized disclosures of CPNI, nor did it receive any complaints from customers in that regard. During that same time, TSTC did not have reason to, and therefore did not take any action take any actions against data brokers. In addition, TSTC has now calendared its filing obligation to ensure timely submission of its certification next year.

TSTC, as a Texas state agency and as a small carrier serving primarily other Texas public institutions, respectfully requests that the Commission excuse its reporting oversight, recognizing that steps have been taken to ensure that future certifications will be timely filed in accordance with Commission Rules.

Please direct any questions regarding this matter to undersigned counsel.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Evan Carb", written in a cursive style.

Evan D. Carb, Esq.

Enclosures

cc (via Email): Marcy Greene, Deputy Division Chief
Michael L. Reeser, President, TSTC
Shelli Scherwitz, Director Telecom., TSTC



FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau, Telecommunications Consumers Division
445 12th Street, S.W.
Washington, D.C. 20554

September 5, 2008

Via First Class United States Mail

Legal Department
Texas State Technical College
300 Homer K. Taylor Drive
Sweetwater, TX 79556

09-08-08P03:13 RCVD

Re: File No. EB-08-TC-5674

Dear Sir or Madam:

The Enforcement Bureau ("Bureau") of the Federal Communications Commission is investigating potential violations of section 222 of the Communications Act of 1934, as amended, 47 U.S.C. § 222 and section 64.2009(e) of the Commission's rules, 47 C.F.R. § 64.2009(e), regarding customer proprietary network information ("CPNI"). The Instructions for responding to this letter and the Definitions for certain terms used in this letter are contained in the attachment hereto. We direct Texas State Technical College (also referred to as "Company") to provide the information and documents specified below within 10 business days from the date of this letter.

Unless otherwise indicated, the period of time covered by these inquiries is January 1, 2007 to the present.

Documents and Information to be Provided

1. Did Texas State Technical College file a 47 C.F.R. § 64.2009(e) compliance certificate for the calendar year 2007 on or before March 1, 2008 in EB Docket 06-36? If so, provide a copy and evidence of filing. If not, please submit a detailed explanation of why not.

Filing Requirements

We direct the Company to support its responses with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of the company with personal knowledge of the representations provided in the Company's response, verifying the truth and accuracy of the information therein and that all of the information requested by this letter that are in the Company's possession, custody, control or knowledge have been produced. If multiple Company employees contribute to the response, in addition to such general affidavit or declaration of the authorized officer of the company noted above, if such officer (or any other affiant or declarant) is relying on the personal knowledge of any other individual, rather than his or her own knowledge, provide separate affidavits or declarations of each such individual with personal knowledge that identify clearly to which responses the affiant or declarant with such personal knowledge is attesting. All such declarations provided must comply with Section 1.16 of the Commission's rules,¹ and be substantially in the form set forth therein.

¹ See 47 C.F.R. § 1.16.

9/5/2008

Page 2 of 4

To knowingly and willfully make any false statement or conceal any material fact in reply to this inquiry is punishable by fine or imprisonment.² Failure to respond appropriately to this letter of inquiry may constitute a violation of the Communications Act and our rules.

The company shall direct its response via e-mail to robert.somers@fcc.gov and to marcy.greene@fcc.gov. The company may also send its response, if sent by messenger or hand delivery, to Robert Somers, Senior Attorney, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, Room 4-C124, with a copy to Marcy Greene, Deputy Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, Washington, D.C. 20554, Room 4A-263. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Robert Somers, Senior Attorney, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, Room 4-C124, with a copy to Marcy Greene, Deputy Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, Washington, D.C. 20554, Room 4A-263.

Sincerely,

/s/ Marcy Greene

Marcy Greene
Deputy Division Chief
Enforcement Bureau

cc: Colleen Heitkamp
Robert Somers

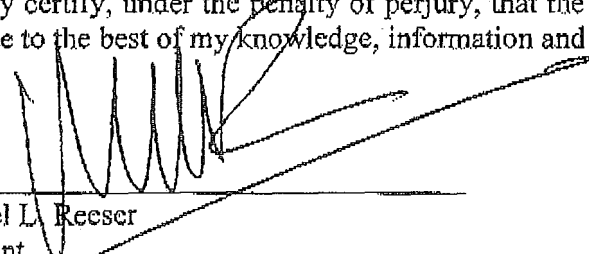
² See 18 U.S.C. § 1001; see also 47 C.F.R. § 1.17.

DECLARATION OF MICHAEL L. REESER

I, Michael L. Reeser, this 18th day of September 2008, hereby declare as follows:

1. I am the President and an Officer of Texas State Technical College West Texas ("TSTC"), an educational agency of the State of Texas.
2. In that capacity, I oversee the Department of Telecommunications Services at TSTC, which, amongst other things, provides internet and video distribution services on a carrier basis to other state educational entities and institutions within Texas Educational Service Center Region 14.
3. In my capacity as President, I have general knowledge of the policies and procedures in place within that department, but largely rely on the personal knowledge of the Director of Telecommunications Services, as the department manager.
4. Based on my review of the facts and the statements made in the accompanying declaration of Shelli Scherwitz, Director of Telecommunications Services at TSTC related to TSTC's safeguarding of customer proprietary network information ("CPNI"), I certify that TSTC maintains procedures adequate to ensure its compliance with subpart U of Part 64 of the FCC's Rules regarding the safeguarding of CPNI, that TSTC does not market such information to third parties, that there was no unauthorized disclosure of CPNI information to third parties during 2007, that no customer filed any complaint with regard to TSTC's handling of its CPNI and that TSTC had no problems with and took no actions against data brokers in 2007.

I hereby certify, under the penalty of perjury, that the foregoing statements are true, correct and accurate to the best of my knowledge, information and belief.



Michael L. Reeser
President



Date

DECLARATION OF SHELLI SCHERWITZ

I, SHELLI SCHERWITZ, this 18th day of September 2008, hereby declare as follows:

1. I am the Director of Telecommunications Services of Texas State Technical College West Texas ("TSTC"), an educational agency of the State of Texas.
2. In that capacity, I oversee the provision of internet and video distribution services by TSTC to other state educational entities and institutions within Texas Educational Service Center Region 14, and therefore have first hand personal knowledge of the procedures in place and activities related to TSTC's safeguarding of customer proprietary network information ("CPNI"). TSTC as a public State College is itself very sensitive to the handling and safeguarding of such information.
3. In 2006 TSTC applied for and received certification as a carrier for the provision of certain communications services.
4. TSTC's primary customer is a consortium of Texas public schools and colleges operating within Texas Educational Service Center Region 14. TSTC also provides service to a local museum, a hospital and an employment center.
5. In its capacity as a service provider, TSTC contracts for the acquisition or leasing of fiber and other needed telecommunications assets for the provision of data and video distribution services to its customers such as H323 Video conferencing, learning management software applications, internet content filtering as required for K-12 school districts, domain and web server support services.
6. As a State Entity and a not for profit institution providing services to other state entities in its area, TSTC was unaware of any reporting requirement regarding its internal procedures designed to ensure the confidentiality of its customers' proprietary network information. Accordingly, TSTC did not file a certificate for calendar year 2007 on or before March 1, 2008, in accordance with 47 CFR §64.2009(e), stating that it had in place operating procedures sufficient to ensure TSTC's compliance with Subpart U of Section 64 of the Commission's Rules.
7. Upon receipt of the Enforcement Bureau's inquiry letter dated September 5, 2008 ("Commission Letter"), TSTC confirmed that no such certificate had been sent concerning 2007, and then performed a review of its internal practices regarding its handling and safeguarding of relevant customer proprietary network information related to TSTC's carrier services to ensure that it would have been able to make that certification on or before March 1, 2008.
8. That review yielded the following conclusions. TSTC uses CPNI primarily in the process of billing its customers, an activity within the control of a relatively small group of people at TSTC. In addition, such information may be used in discussions with applicable customers regarding needed service or capacity enhancements or modifications. Further, such information is discussed with customers in regard to their assessment of usage levels, usage history and usage costs, in association with their preparation of E-rate filings. A small group of technical staff who maintain the infrastructure and manage traffic, also have access to information regarding present usage authorization levels, facilities allocation and usage patterns.

9. Internal review confirmed that TSTC does not market such information to third parties, none of that information was shared with outside sources during the past year and no customer filed any complaint with regard to TSTC's handling of its proprietary network information. Having detected no problem and having received no complaints regarding data brokers, TSTC took no actions against such entities in 2007.
10. Internal policies distributed to and applicable to all TSTC staff with access to CPNI prohibit the disclosure of CPNI to third parties, except in accordance with the instructions provided by a customer, the safeguarding of such information with regard to filing and storage, and the securing of verification of identity when discussing CPNI with customers. That policy has been reduced to writing and is provided as an attachment to this declaration.
11. Upon receipt of the Commission Letter, TSTC also promptly sought the assistance of counsel and immediately moved to put in place formal procedures designed to further ensure strict compliance with the requirements of Subpart U of Section 64 of the Commission's Rules, including the calendaring of CPNI compliance certifications..
12. In an effort to remediate any possible past failure by TSTC to comply with its certification requirements, TSTC is filing concurrently herewith a CPNI Certification for 2007, stating that it had in place policies and procedures adequate to ensure compliance with Commission's Rules regarding the safeguarding of customer proprietary network information.
13. TSTC as an agency of the State of Texas is highly sensitive to the need to protect proprietary network information, but as a small not for profit carrier, principally seeking to provide cost effective video and data services to area schools and municipal entities, it respectfully asks for the indulgence of the Federal Communications Commission with regard to its limited oversight of its reporting obligation related to its handling of CPNI during 2007. While TSTC failed to report on its compliance with the rule, a review of the period at issue reveals that TSTC's policies and practices adequately protected customer information and resulted in no complaints or unauthorized release of CPNI during 2007.

I hereby certify, under the penalty of perjury, that the foregoing statements and those contained in the letter response prepared by counsel are true, correct and accurate to the best of my knowledge, information and belief.



Shelli Scherwitz
Director - Telecommunications Services

9/18/08
Date

OFFICE OF THE PRESIDENT

September 18, 2008



325-235-7336
FAX: 325-235-7320
www.tstc.edu

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., Suite TW-A325
Washington, D.C. 20554

Re: Annual 64.2009(e) CPNI Certification for 2007
Texas State Technical College
499 Filer ID No. 825674
EB Docket No. 06-36

Dear Ms. Dortch:

This statement is to certify that Texas State Technical College West Texas ("TSTC") has not and does not sell any customer information to anyone or to any company. TSTC is a not for profit educational agency of the State of Texas, in part providing educational communications resources for video distribution and internet to itself and other state schools and institutions in Texas Educational Service Center Region 14. TSTC keeps all customer information and records, both paper and electronic, in a secure location and uses such information only for billing purposes and to discuss with customers service level adjustments and usage history. Access to that location, as well as the information stored there, is strictly limited to a few authorized personnel of TSTC, each of whom has been trained in the need to maintain the strictest security respecting customer proprietary information. Technical staff that manage the system are also under strict instructions not to share information regarding customers and usage patterns with third parties.

TSTC was previously unaware of an annual certification requirement applicable to it under Part 64 of the Rules pertaining to the securing of customer proprietary information. Upon recent receipt of an inquiry letter from the FCC, TSTC first learned of this obligation. Nonetheless, a review of TSTC's policies and internal practices reveals that TSTC adequately safeguarded the proprietary information of its customers and complied with the requirements of subpart U of Section 64 of the Commission's Rules for the period in question. As noted above TSTC does not use any of its customer proprietary information for marketing and does not sell such information to third parties. Additionally, TSTC's policies and practices with regard to such information restricted its availability to but a few technical and billing personnel. Over the past year, TSTC has not received any customer complaints regarding the unauthorized release or mishandling of proprietary information. Additionally, TSTC did not take any actions against data brokers between January 1, 2007, and the date of this letter.

650 E. HWY 80
ABILENE, TX 79601
325-672-7091

307 N. BRECKENRIDGE AVE.
BRECKENRIDGE, TX 76424
254-559-6556

305 BOOKER ST.
BROWNWOOD, TX 76801
325-641-5987

300 HOMER K. TAYLOR DR.
SWEETWATER, TEXAS 79556
325-235-7300

Page 2


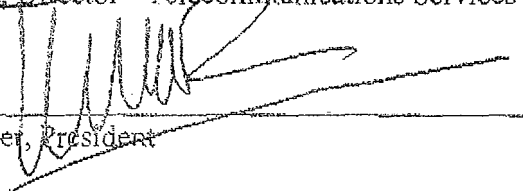
September 18, 2008

Annual 64.2009(e) CPNI Certification for 2007

TSTC has disseminated its policy to and has trained all personnel associated with such communications services to treat such customer information and customer records as proprietary information and to not share information with any outside parties. Attached to this certificate is a copy of TSTC's policy regarding the procedures employed for the protection of customer information.

The undersigned, Shelli Scherwitz, Director of Telecommunications Services at TSTC, hereby certifies under penalty of perjury that I am the Director of Telecommunications and an officer of TSTC and responsible for the preparation of this certificate and oversight of TSTC's compliance with the CPNI rules. I further certify to the truth and accuracy of the information contained in this certificate, that I have personal knowledge of TSTC's operating procedures, and that TSTC has established operating procedures adequate to ensure compliance with the FCC's CPNI rules set forth in §§64.2001 *et seq.*

The undersigned, Michael L. Reeser is the President and an officer of TSTC, and as such has oversight over the department providing carriage services and reviews its policies and procedures, but relies on the director of that department as the person with personal knowledge regarding the implementation of such policies and procedures. I certify on behalf of TSTC and based on the statements made herein by Shelli Scherwitz, the Director of Telecommunications Services, that TSTC has established operating procedures adequate to ensure compliance with the FCC's CPNI rules set forth in §§64.2001 *et seq.*


Shelli Scherwitz, Director - Telecommunications Services9/18/08
Date
Michael L. Reeser, President09/18/08
Date

Attachment

c: Enforcement Bureau, FCC
Best Copy and Printing, Inc.

**TEXAS STATE TECHNICAL COLLEGE WEST TEXAS
CUSTOMER INFORMATION POLICY**

To protect the proprietary and private information about our customers, Texas State Technical College, West Texas, has established this internal policy regarding customer information:

1. All of the TSTC's proprietary carrier data bases, including that containing customer information, are password protected, and access to same is limited to authorized personnel only. Access to TSTC's network is by password and distribution of the database password is limited to authorized personnel, and is changed periodically.
2. Employees are to closely guard customer lists, contact information, telephone numbers, mobile code lists, Email addresses and all other customer information, both proprietary and public, to prevent any information from being removed from our offices by non-employees, either accidentally or intentionally.
3. Customer information may not be removed from the TSTC offices by employees or others, except for meetings with customers themselves, in which case such information must be returned to the files immediately following such meeting. This includes computer printouts, handwritten information or notes, photocopies of files or documents or copies in any electronic form, and verbal transmission of customer information to persons who are not direct employees of the TSTC.
4. Internal documents, notes made on customer visits or when customers call in, and anything containing customer proprietary information must be promptly filed or shredded.
5. Each new customer is asked to select a personal password and security question, which password and information is to be used for identification purposes before discussing such customer's account over the phone. At the start of any phone contact with a customer, the customer must confirm his/her identity by providing his/her password or answering the security question and must authorize the TSTC employee to review his/her account information before any matter involving CPNI may be discussed with the customer. If the customer chooses to not use a password, they must verify their social security or Tax ID number and current billing address before information is given to them regarding their account.
7. Customer information is never to be used or disclosed to anyone, except as follows:
 - (a) to market the company's service offerings to customer;
 - (c) to protect the company's own rights and property, and to protect the rights of other carriers or other users of services from fraudulent, abusive or unlawful use;
 - (d) to comply with the company's obligations to provide certain customer information when lawfully requested by law enforcement authorities pursuant to the Communications Assistance for Law Enforcement Act ("CALEA"); and
 - (e) to resolve specific customer questions about the customer's own account following identification verification and prior authorization are obtained.
8. Disconnected or inactive customer files are to be retained for no more than three (3) years, and then shredded. Disconnected or inactive customer files are never to be placed in the trash unshredded. Customer database printouts are to be shredded when replaced by newer printouts.
9. Appropriate disciplinary action will be taken for any violations of this policy.

Texas State Technical College
Response to
Omnibus Notice of Apparent Liability for Forfeiture (DA 09-240)

EXHIBIT 4

TSTC 2007 Annual CPNI Certification Filed September 18, 2008

OFFICE OF THE PRESIDENT

March 3, 2009

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., Suite TW-A325
Washington, D.C. 20554



325-235-7336
FAX: 325-235-7320
www.tstc.edu

Re: Annual 64.2009(e) CPNI Certification for 2008
Texas State Technical College
499 Filer ID No. 825674
EB Docket No. 06-36

Dear Ms. Dortch:

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A review of TSTC's policies and internal practices reveals that TSTC adequately safeguarded the proprietary information of its customers and complied with the requirements of subpart U of Section 64 of the Commission's Rules for the period in question. As noted above TSTC does not use any of its customer proprietary information for marketing and does not sell such information to third parties. Additionally, TSTC's policies and practices with regard to such information restricted its availability to but a few technical and billing personnel. Over the past year, TSTC has not received any customer complaints regarding the unauthorized release or mishandling of proprietary information. Additionally, TSTC did not take any actions against data brokers between January 1, 2008 and the date of this letter.

TSTC has disseminated its policy to and has trained all personnel associated with such communications services to treat such customer information and customer records as proprietary information and to not share information with any outside parties. Attached to this certificate is a copy of TSTC's policy regarding the procedures employed for the protection of customer information.

The undersigned, Shelli Scherwitz, Director of Telecommunications Services of TSTC, hereby certifies under penalty of perjury that I am the Director of Telecommunications and an officer of TSTC and responsible for the preparation of this certificate and oversight of TSTC's compliance with the CPNI rules. I further certify to the truth and accuracy of the information contained in this certificate, that I have personal knowledge of TSTC's operating procedures, and that TSTC has established operating procedures adequate to ensure compliance with the FCC's CPNI rules set forth in §§64.2001 *et seq.*

650 E. HWY 80
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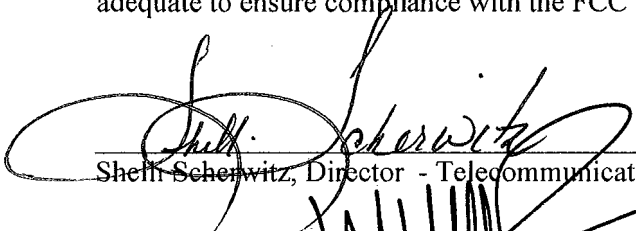
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325-235-7300

Annual 64.2009(e) CPNI Certification for 2008
Texas State Technical College
499 Filer ID No. 825674
EB Docket No. 06-36
Page 2

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Shelli Scherwitz, Director - Telecommunications Services

3/3/09

Date



Michael L. Reeser, President

3/3/09

Date

Attachment

cc: Enforcement Bureau, FCC
Best Copy and Printing, Inc.

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2. Employees are to closely guard customer lists, contact information, telephone numbers, mobile code lists, Email addresses and all other customer information, both proprietary and public, to prevent any information from being removed from our offices by non-employees, either accidentally or intentionally.
3. Customer information may not be removed from the TSTC offices by employees or others, except for meetings with customers themselves, in which case such information must be returned to the files immediately following such meeting. This includes computer printouts, handwritten information or notes, photocopies of files or documents or copies in any electronic form, and verbal transmission of customer information to persons who are not direct employees of the TSTC.
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 - (d) to comply with the company's obligations to provide certain customer information when lawfully requested by law enforcement authorities pursuant to the Communications Assistance for Law Enforcement Act ("CALEA"); and
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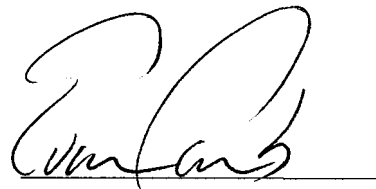
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9. Appropriate disciplinary action will be taken for any violations of this policy.

CERTIFICATE OF SERVICE

I, Evan Carb, hereby certify that copies of the foregoing Texas State Technical College Response to Omnibus Notice of Apparent Liability for Forfeiture were served this 26th day of March, 2009 on the following parties via first class mail of the United States Postal Service, postage prepaid, As well as by Email to the following addresses:

Marcy Greene, Deputy Chief,
Telecommunications Consumers Division,
Enforcement Bureau,
Federal Communications Commission,
445 12th Street, SW, Washington, DC 20554

Marcy.greene@fcc.gov

A handwritten signature in black ink, appearing to read "Evan Carb", is written over a horizontal line.